



United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825-1898

RTD-251

IN REPLY REFER TO:

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WTR-4.00

SEP 15 2017

Ms. Norma Camacho,
Chief Executive Officer
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3686

Subject: Participating Central Valley Project Contractors in the State of California's WaterFix –
Central Valley Project, California

Dear Ms. Camacho:

Reliable delivery of water through the Sacramento-San Joaquin Delta (Delta) is paramount to the overall operation of the Central Valley Project (CVP) and the State of California's State Water Project (SWP). To help restore reliability, reduce the potential for disruption of water deliveries through the existing Delta diversion facilities from natural disaster, and allow more natural flows in the Delta for salmon, smelt, and other species, the State of California is proposing to construct the California WaterFix (CWF). As currently proposed, the CWF would carry fresh water in two tunnels, with a total of 9,000 cubic feet per second of capacity, under the Delta from the Sacramento River towards existing Delta diversion facilities. The CWF, in combination with existing Delta diversion facilities, locally-driven water conservation, groundwater, recycling, and storage projects would create a smarter, more sustainable water system for the 21st century. While the Bureau of Reclamation supports the goals of the CWF, Reclamation currently lacks the legal authority to fund CWF construction. Accordingly, at this time, Reclamation will not be participating¹ in the construction of CWF, will not own any of the CWF facilities, and the CWF will not be a CVP facility.

Nevertheless, Reclamation supports a proposal by which CVP contractors independently determine whether to participate in the CWF by contracting directly with the California Department of Water Resources (DWR), or other appropriate entity, for the ownership of the available capacity of the CWF. Over the past several months, an informal working group comprised of CVP Contractors, SWP Contractors, Reclamation, and DWR have met to discuss a CVP Contractor-driven proposal, known as the "participation approach."² This approach is

¹ For purposes of this letter, "participating" in the CWF means to agree to contract with the California Department of Water Resources, or other appropriate entity, to pay a percentage of the construction costs or to provide funding through any other mechanism to secure future use of the capacity of the CWF.

² The participation approach does not cover participation by the SWP contractors, which would be governed separately by DWR.

intended to avoid negatively impacting non-participants due to the CWF and follow a “beneficiary pays” principle for CVP participation. The participation approach is primarily a proposal to address how CVP Contractors could use CWF facilities, which would be non-CVP facilities, for conveyance of CVP water. Accordingly, this letter sets forth how Reclamation, consistent with existing law and policy, and subject to execution of a Record of Decision for the CWF, would expect to accommodate participating CVP Contractors’ use of the CWF to convey CVP water, while protecting non-participating CVP Contractors.

Key Assumptions

This letter, and Reclamation’s understanding of the participating CVP Contractors proposed use of the capacity of the CWF, is based upon the following key assumptions. Considering that the CWF may not be fully implemented for well over a decade and that the key assumptions underpinning this letter may change, Reclamation would revise this letter, in coordination with CVP contractors, should material changes occur to these assumptions.

- Reclamation understands that DWR will hold title to CWF facilities and may split the capacity of the CWF between the SWP and the CVP at 55-percent and 45-percent, respectively. If so, CVP South of Delta Contractor(s) would acquire from DWR up to the entire 45-percent of the capacity of the CWF for conveyance of CVP water.
- The CWF is intended to be operated to maximize water supply and fishery benefits partly by moving SWP and CVP water that could not be otherwise stored or moved through existing Delta diversion facilities. This operation is expected to occur primarily during excess conditions over the fall and winter months, but may extend into some spring and summer months as well. During these excess conditions, Reclamation anticipates that the CWF would be operated along with south Delta facilities to divert water to the greatest extent possible, consistent with operational restrictions;
- “CWF Water,” as the term is used in this letter, would be calculated as the incremental difference between total water conveyed south of Delta and the amount of water that could have been conveyed through the Delta without CWF, using the Hindcasting Accounting Method summarized below. The majority of the water supply benefit of the CWF is expected to be realized during the period when existing regulations limit surface channel, through-Delta pumping.
- Under current Reclamation law and policy, and consistent with current CVP water-related contract terms and conditions, CWF Water would remain CVP water. Reclamation would continue efforts to determine and define applicable Reclamation law, policy, and contract terms and conditions to make CWF water exclusively available to participating CVP Contractors.

- Participating CVP Contractor(s) are limited to water supply benefits up to their Contract Total³, as provided in their existing CVP water contracts, and may receive delivery of CVP water in excess of their Contract Total only if consistent with Federal reclamation law, policy, and contract terms and conditions.
- CWF Water may be stored by Reclamation, and, if made available, rescheduled, in San Luis Reservoir, but would not, at any time, interfere with CVP operations. CWF and CVP rescheduled water would be accounted for in San Luis Reservoir, along with potential non-CVP water, consistent with the CVP rescheduling guidelines, the integration agreement (see below), and associated operating plans developed consistent with the understandings described in this letter.
- Reclamation does not intend to use the CWF to export additional CVP stored water south of the Delta.
- Once the regulatory framework under which the CWF will be operated is more defined, Reclamation will work with DWR and the CVP contractors to develop a detailed operating plan.
- Hindcasting, as discussed below, is an acceptable method for determining the quantity of CWF Water, and DWR and Reclamation would develop necessary tools to accurately hindcast.
- Additional water supply requirements that are tied solely to CWF permits and operations would not be met using increased releases of upstream CVP stored water. CWF-specific outflow requirements above the then-existing regulations would be met through CWF reductions and/or acquisition of water, by Participants, from willing sellers.
- If there are CWF-specific regulatory requirements imposed that would not have been required without the CWF, such regulations would not impact the annual amount of CVP water made available to non-participating CVP Contractors. The integration agreement would determine a method or agreement to ensure that the CVP allocation would not be decreased, as compared to an operation without the CWF.
- DWR, through SWP contractors and participating CVP Contractors, would be responsible for funding and implementing the Proposed Action in the CWF Biological Assessment, the Reasonable and Prudent Measures in the CWF Biological Opinions, and the Terms and Conditions in the CWF Biological Opinions, unless those commitments and requirements were previously agreed to in-writing by Reclamation or required by the 2008 smelt Biological Opinion or the 2009 salmon Biological Opinion for CVP/SWP operations.

³For purposes of this letter, "Contract Total" includes contract total or contract delivery obligation, whichever is controlling.

- Reclamation expects that existing CVP commitments for the use of Banks Pumping Plant, and associated SWP facilities, would be maintained to ensure that conveyance of CVP water to the Cross Valley Contractors would not be impacted.
- Reclamation would continue to meet its obligations under the Central Valley Project Improvement Act (CVPIA), including deliveries to wetland habitat areas (“Refuges”) under Section 3406(d) of the CVPIA, and existing relative water rights and contractual priorities would be protected for non-participating CVP Contractors in any integration agreement that is executed.
- Operation of the CWF and use of the capacity of the CWF by participating CVP Contractors would neither negatively impact non-participating CVP Contractors nor Reclamation’s ability to meet existing legal obligations.

The CVP CWF Hindcasting Accounting Method

Reclamation would expect to use the following accounting process to protect the amount of CVP water made available to participating and non-participating CVP Contractors, consistent with Federal reclamation law, policy, and contract terms and conditions. This process would identify two distinct amounts of CVP water made available to participating CVP Contractors: a “CVP Allocation” consisting of CVP water that could have been delivered through existing Delta facilities without the CWF, and a separate “CWF Allocation” consisting of CVP water that could not have been stored upstream, or delivered without the CWF. Together, the CVP and CWF Allocations would make up the total CVP water made available to participating CVP Contractors. Ultimately, participating CVP Contractors would receive both a CVP Allocation and a CWF Allocation, while the non-participating CVP Contractors would only receive a CVP Allocation.

- The CVP Allocation would be developed without consideration of the already conveyed CWF water, or future use of the CWF.
- The CWF Allocation would be a calculated amount that represents the CVP portion of the CWF Water after it has been conveyed south of Delta. This allocation would be divided among CVP participants, consistent with Federal reclamation law, policies, and contract terms and conditions.

Integration Agreement with DWR

Reclamation is working with DWR to develop an integration agreement to define how Reclamation and DWR anticipate coordinating the operations of the CVP and SWP with respect to the CWF. The integration agreement would include, at a minimum, the following:

- Accounting and mitigation of water supply impacts attributable to CWF-specific regulations that have the potential to decrease the CVP Allocation for non-participating CVP Contractors.
- Defined assumptions for use in the CWF Allocation process. These may include base DWR operational assumptions, sharing of regulatory requirements, storage in San Luis Reservoir, accounting for changes to required carriage water, and others.

Available CWF Water

The hindcasting accounting method would identify CWF Water available for delivery to participating CVP Contractors. Currently, the projected CWF Water to be made available to participating CVP contractors is expected to be within CVP Contract Totals in most years, and will be made available consistent with existing contract terms and conditions. Reclamation will consider requests from participating CVP Contractors to add the CWF facilities as an additional point of delivery, or to bank CWF water; however, all deliveries (banked water is delivered water) will be within Contract Total, and all participating CVP Contractors would still be limited by their Contract Service Area, the transfer guidelines, and CVP place of use.

As stated above, it is expected that CWF Water would not exceed the Contract Total of the participating CVP Contractors, except in limited circumstances. In those limited circumstances, there are existing contract provisions which may allow a participating CVP Contractor to realize water supply benefits above their Contract Total on a short-term basis (e.g. Article 3(f), pre-use, and Section 215 contracts). Should a CVP Contractor wish to realize water supply benefits that exceed its Contract Total in other than limited circumstances, the participating CVP Contractor would need to identify a long-term solution that is acceptable to Reclamation (which may include an amendment of their existing contract, assignment of existing CVP contract supply, or similar solution) or otherwise be subject to the limitations provided in their CVP Contract, existing law, and the available storage of CVP water in San Luis Reservoir.

The participating CVP Contractors may reschedule their CWF Water, consistent with the terms and conditions of their CVP Contracts, and the storage priorities of San Luis Reservoir as established by applicable Federal reclamation law and policy, specifically, the Act of February 21, 1911 (Warren Act), Section 3406(d)(1) of the CVPIA and Section 10004(a)(4)(B) of the San Joaquin River Restoration Settlement Act. CWF Water is subject to the applicable CVP Ratesetting Policies and the participating CVP Contractors would be required to pay all applicable costs, including CVPIA charges, for delivery of the CWF Water. The use of Project Use Energy to convey CWF Water would also be consistent with Federal reclamation law and policy.

Movement of CVP water through the CWF and Costs

The integration agreement would enable DWR to operate the new facilities for conveyance of CVP water. The CWF would be used to convey the CVP water for participating CVP

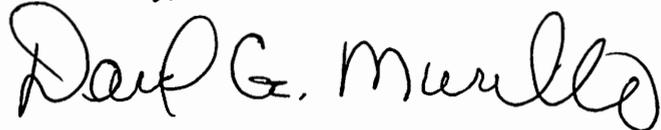
Contractors and other CWF requirements. Reclamation understands that the conveyance of CVP water for the benefit of participating CVP Contractors, or for compliance with CWF-specific requirements, would be funded by the participating CVP Contractors and/or DWR. Neither Reclamation nor the non-participating CVP Contractors would pay any construction, fixed, or variable operation or maintenance costs for this conveyance.

Reclamation will coordinate with DWR on the use of the CWF to move water, which would otherwise have been conveyed through the delta, for the benefit of fish or other CVP purposes. Reclamation supports continued discussions between participants and non-participants to find an agreeable methodology, consistent with applicable law and policy, for determining how costs associated with these incidental benefits are calculated and collected.

In the event that Delta conditions worsen, Reclamation may contract with DWR and/or participating CVP Contractors to use available capacity, on a short term basis, to move CVP water for general CVP purposes. Subject to applicable Federal reclamation law, including the limitations provided in Section 3406(d)(5) of the CVPIA, Reclamation would anticipate paying costs attributable to the conveyance of this water. Prior to Reclamation committing to pay such costs, Reclamation would provide a proposal for review and comment to all CVP contractors, CVP power customers, and any other potentially affected parties.

Reclamation acknowledges the complexities and risks involved to all those who elect to participate in the CWF. This letter contains knowledge, information, and assumptions assembled by Reclamation with significant input from CVP contractors. As CWF moves forward, we will continue to work collaboratively with DWR, SWP Contractors, participating CVP Contractors, non-participating CVP Contractors and CVP power customers. Should you have any additional questions, please contact Ms. Brooke White at bwhite@usbr.gov or 916-414-2402.

Sincerely,



David G. Murillo
Regional Director

Identical Letter Sent To:

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